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Supreme Court of the United States

OCTOBER TERM, 1950.

No. 290

GULF SHIPSIDE STORAGE CORPORATION,
Petitioner

versus

"UNDERWRITERS AT LLOYD'S, LONDON AND/OR COMPANIES",
Respondent

OPPOSITION TO PETITION FOR CERTIORARI

Eberhard P. Deutsch,
1800 Hibernia Bank Building,
New Orleans 12, Louisiana,
Attorney for Opponents

Deutsch, Kerrigan & Stiles,
Mendes & Mount,
Of Counsel

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This case is not appropriate for review by this court, because (1) the only disputed issues are questions of fact;[1] and (2) the petition for certiorari presents for review, only two of the three issues of fact originally presented in the litigation.

The finding below, adverse to petitioner, on the other fact issue—not presented to this court by petitioner—is itself adequate to support the decree of the Court of Appeals.

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[1] *Cf. Graver Mfg. Co. vs Linde Co.*, 336 US 271 (1949), on rehearing, 339 US 605; *Southern Power Co. vs North Carolina Public Service Co.*, 263 US 508 (1924); *Houston Oil Co. vs Goodrich*, 245 US 440 (1918).

The case involves a certificate, issued by an insurance broker, advising an assured that the broker had effected coverage of a risk with unnamed "Underwriters at Lloyd's, London and or Companies".

The basic legal question in the case, is simply whether underwriters (named or unnamed) can be bound on a risk by an insurance broker who has no express, implied or apparent authority in that regard. The negative answer to this question is well settled,[2] and was not disputed by petitioner in this case.

The contested issues in the case were:

1—Did the broker who issued the certificate on which petitioner sued, have any express, implied or apparent authority, to bind any underwriters at Lloyd's on the risk covered by the certificate?

2—If the broker did not have such authority, did the district court have jurisdiction over unidentified and unidentifiable "Underwriters at Lloyd's, London and or Companies"?

3—Assuming *arguendo* that the broker had such authority, was the coverage under the certificate terminated before the loss in suit occurred?

The District Court reserved decision on the first question, held, on the second, that it had jurisdiction, and then decided against petitioner on the ground that any coverage under the certificate "was validly terminated" before the loss occurred.

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[2] 16 Appleman, *Insurance Law and Practice* 78, section 8672.

The Court of Appeals held against petitioner on the first question, since "there was a complete lack of evidence to prove that (the broker) had any authority, either actual or apparent, to bind any individual underwriter at Lloyd's or any Company on the risk identified in the said certificate"; held, on the second question, that the District Court "never did acquire jurisdiction over any identifiable defendant"; and affirmed the finding of the District Court that, in any event, the certificate had effectively been withdrawn by the broker before the loss occurred.

So far from being a case of first impression, as stated on page 4 of the petition for certiorari, the legal principle that an underwriter cannot be bound by an unauthorized broker, is, as noted above, well-settled; and this principle has been applied to underwriters at Lloyd's in at least five decisions, all of which were cited in brief to, and were considered by, the court *a quo*.[3]

Finally, the finding below, that any insurance coverage which might have existed under the certificate, was validly terminated before the loss occurred—which, of itself, fully supports the judgment—is not even presented by petitioner for review, so that the judgment below could not be reversed, even if this court should

[3] *Ell Dee Clothing Co. vs Marsh*, 247 NY 392, 160 NE 651 (1928); *Ater Manufacturing Co. vs Lloyd's*, 139 FS 314 (WD Ark.-1955); *Hauhow vs Stewart Smith & Co.*, 84 Ll. L. Rep. 504 (KB-1951); *Winters, vs Arnold*, Docket No. 18991-PH, U.S. District Court, Southern District of California (1957-unreported); and *Martinette vs Lloyd's at London*, Docket No. 2222, Court of Law and Chancery, City of Norfolk, Virginia (1959-unreported).

agree with petitioner, that insurance coverage by "Underwriters at Lloyd's, London and/or Companies" was provided by the certificate in the first instance.[4]

It is respectfully submitted that the petition for certiorari should be denied.

Eberhard P. Deutsch,
Attorney for Opponents

Deutsch, Kerrigan & Stiles,
Mendes & Mount,
Of Counsel

August, 1960

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[4] *Cf. Herb vs Pitcairn*, 324 US 117, 126 (1945): "Our power is to correct wrong judgments, not to revise opinions".